

IDEA Part C Regulation Conference Call
Moderator: Ruth Ryder
September 6, 2011

Coordinator: Welcome and thank you for standing by.

All participants will be in a listen-only mode throughout the duration of today's conference. Today's call is being recorded. If you have any objections you may disconnect at this time.

Now I will turn the meeting over to Ms. Ruth Ryder.

Ruth Ryder: Good morning everyone. This is Ruth Ryder, Deputy Director of the Office of Special Education Programs at the U.S. Department of Education. I'm pleased to be here with you today for the announcement of the release of the final regulations implementing Part C of the Individuals with Disabilities Education Act. These regulations will help improve services and outcomes for America's infants and toddlers with disabilities and their families.

I'm especially pleased this morning to introduce our distinguished speakers, Secretary of Education Arne Duncan; Kareem Dale, Associate Director, White House Office of Public Engagement and Special Assistant to the President for Disability Policy; and Dr. Alexa Posny, Assistant Secretary of the Office of Special Education and Rehabilitative Services.

Before I turn it over to Secretary Duncan, please note that today's call is listen-only, and we unfortunately will not have time for Q&A since the secretary and Dr. Posny will be leaving immediately to kick off the Education and the Economy Back-to-School Bus Tour. There will be, however, future opportunities for discussion of the new regulation.

I'd like to turn the call over to Secretary Duncan who is a true champion of early learning. The secretary consistently emphasizes the importance of intervening early to ensure kindergarten readiness. The secretary is also a strong supporter of programs for infants, toddlers, children and youth with disabilities and their families. We appreciate your being here today for this important announcement. Secretary Duncan.

Arne Duncan: Thanks, Ruth. And thanks to all of you for joining us. And good morning. As everyone who works on education understands, one of the most important things we can offer children is a high-quality early learning experience that prepares them for kindergarten. This is true for all children, but especially important for infants and toddlers with disabilities to have access to high-quality early intervention services that prepare them to successfully transition to preschool and kindergarten.

President Obama and I understand this, and are supporting policies that will create early learning environments to support all children. And when we say all we mean all, regardless of income, race, background or ability. Today we're joined by a great partner, Kareem Dale, for the White House, Alexa Posny, who is doing a fantastic job to announce the new regulations under Part C of the Individuals with Disabilities Education Act. I know you've been waiting a long time for these regulations.

The Part C regulations will support the Department's commitment to the goal of preparing more children with high needs with a strong foundation for success in school and beyond. We're updating these regulations during a historic time for the Department of Education for its role in, and commitment to, early learning.

Just two weeks ago, we published the final criteria and application for the Race to the Top Early Learning Challenge. This was the result of a strong and unprecedented partnership with the Department of Health and Human Services. Kathleen Sebelius and her team have been great to work with. And the days of each of us operating in our individual silos are officially over.

Our overarching goal for the Early Learning Challenge is making sure that many, many more children enter kindergarten ready to succeed. The Early Learning Challenge is an opportunity to address some of the core challenges in assuring high quality across early learning and development programs, including IDEA Part C and Preschool Programs.

In the Early Learning Challenge we're asking states to commit to integrating and aligning resources and policies across all agencies that administer public funds to their early learning and development programs. The competition will provide incentives to those states that align their early learning and development programs.

IDEA Part C Early Intervention and the Part B Preschool Grant Programs will be critical partners in this work. The Part C regulations will help support and improve the coordination of the early intervention program with other early childhood education programs in the state. These regulations focus on the improvement of outcomes for infants and toddlers with disabilities and their

families. They will provide states with flexibility, while holding them absolutely accountable for providing children with high-quality services.

This is an exciting time to work in the field of early learning. We have a tremendous opportunity to improve the lives of our youngest children and prepare them to fulfill their true potential in preschool, elementary school and beyond. Thanks for all the hard work each of you have done to support this critical early intervention program.

And now I'll turn it over to Kareem Dale to share some additional details.
Kareem.

Kareem Dale: Thanks a lot, Arne. And thanks to all of you all for joining the call today. First day after the holiday weekend, so we certainly appreciate everybody joining. And I want to extend my thanks to Secretary Duncan, to Alexa, to Melody Musgrove and the entire OSERS and the Department of Education teams for shepherding these very important regulations through.

As Secretary Duncan mentioned folks have been waiting a long time for these regulations. And really on behalf of the President and the White House, I just want to say that we are thrilled that these regulations are coming out. We think that they're obviously very important. They are very important because they - investing in the health and the educational development of our youngest children, including children with disabilities - is vital to ensuring America's long-term strength and competitiveness.

You hear the President, you hear Secretary Duncan talking about all the time, that making sure that our children are ready for the jobs of the future really starts at birth. And it's very important at the early intervention stage to make sure that kids are hitting the schoolhouse door ready to learn. I mean

ultimately we know that we want each child to enter kindergarten ready to excel at the kindergarten stage, first grade, middle school, high school and beyond. And we know that that begins at the early intervention stage.

Right now we know that states are serving approximately 353,000 toddlers and infants with disabilities and their families under the Part C Early Intervention Program which is funded by the Department of Education. As Secretary Duncan talked about, the Department's Early Intervention and Early Learning Challenge Program and Part C focus on improving the outcomes for children who are at risk for successful learning at the earliest possible stage.

We know that state collection of data is very complicated and can be very difficult related to infants and toddlers with disabilities. But the rewards far outweigh any complications because that data, that information that we gain, demonstrates that early intervention works and that Part C program can be a model for state coordination of statewide services.

And so what we know from these data, what we know from the data that everybody is collecting under the Part C program, which is vital, is that 74% of infants and toddlers with disabilities who receive Part C services show increases in their rate of development. And we also know that 60% of infants and toddlers with disabilities who receive the Part C services exit the program at the age of three or earlier with the skills expected, or that are expected, for their age. These are good numbers but we all know that we need to and we must do better and these percentages must go up.

These Part C regulations that we are releasing today support the development of high-quality state and local data so that we can collect the valid and reliable information that we need related to Part C Early Intervention, including data on early childhood outcomes.

And so our goal for these children, is so that these children are leaving the Part C program ready to enter inclusive and integrated learning centers, preschools, and so they then are prepared to continue on into integrated classrooms, inclusive classrooms, so that they are learning alongside their peers.

And so we know that the President has talked about, Secretary Duncan has talked about the foundation for our kids is the foundation for our future, is the foundation for our country's future, so that these kids will be ready to learn, and so that kids with disabilities will not be left behind and will be on a level playing field with all other kids and ready to excel and obtain the jobs of the future.

So again I commend the Department of Education for their work on behalf of the President. And we're thrilled that the regulations are coming out, and we look forward to further engagement. As Ruth talked about at the beginning, there's no question-and-answer today, but as Secretary Duncan and Alexa go out on the Bus Tour and then beyond there will certainly be time for more discussion about the regulations.

So with that, I'll turn it over to Alexa. Alexa.

Alexa Posny: Thanks, Kareem. And thank you very much, Arne, for both of you, your support has been great. We are very excited about the role of the IDEA Part C Early Intervention Program and its partnership with the Race to the Top Early Learning Challenge initiative of the Department.

This is really an exciting day, and for those of you who know me you have no idea how great this is, and we recognize that the field has been waiting a very

long time for the IDEA Part C Early Intervention regulations. These should be published in the Federal Register in the next few weeks. These regulations will help improve the lives of our youngest children.

President Obama said, "Unless we take action, unless we step up, there are countless children who will never realize their full talent and potential. I do not accept that future for them." It has been four years since we received comments from over 600 parties on the proposed Part C regulations, and believe me, we heard you. We took your comments very, very seriously.

As I share with you some of the key changes, I'll talk about some of the comments we received and why we made the changes we did. But before I mention a few of the key changes in the Part C regs, I think it's important to point out a few things that we will not be surprised to learn. We regulated on long-standing policies and best practices from the field on early intervention.

First, we have specified that if a particular early intervention service cannot be provided satisfactorily in a natural environment, a justification must be included from the Individualized Family Service Plan or IFSP. The justification must be based on the child's outcomes.

We have also incorporated requirements that apply to Part C through Part B, that is, if a state is required under state law to provide a free appropriate public education or FAPE for services to children with disabilities under the age of three, the state must ensure that those services that constitute FAPE are provided at no cost.

We have allowed the sharing of limited data for child find purposes between the agencies responsible for administering Part C and B in order to help with the seamless transition of children with disabilities between these programs.

And we have also clarified that a lead agency must maintain a current listing of the names and positions of agency employees who may have access to personally-identifiable information.

Leonardo da Vinci once said, "I have been very impressed with the urgency of doing. Knowing is not enough; we must apply. Being willing is not enough; we must do."

As Arne and Kareem have mentioned, what we are doing is focusing on improving outcomes for infants and toddlers with disabilities and their families. We know that by improving outcomes, the rates of development will increase, and children may exit the Part C program, as Kareem mentioned, before the age of three with the skills expected and be more ready for preschool and eventually kindergarten.

Arne has often said, "First, we must invest in early childhood education. Too many children show up for kindergarten already behind. Many never catch up." By focusing on improving outcomes for infants and toddlers with disabilities, we are investing in their future.

The Walkabouts wrote a song that said, "Come back now. Lay all your burdens down, and with a little luck I'll lift your burdens up."

Along with our focus on improving child outcomes, this administration is committed to reducing burden on states. When reading the final Part C regulations, you will see that we have reduced burdens in the areas of state application requirements, permitting the use of screening, and clarifying the service coordinator's role just to mention a few.

Additionally, increasing state flexibility was also important to us. We provide options to states, dispute resolutions, extending Part C services to children over the age of three, and the use of records to establish eligibility are a few of the areas where we have been able to make changes.

Finally, I want to point out that we have continued the Maintenance of Effort, or MOE requirements, notice to supplement, not supplant, provisions under Part C. The Department, however, does plan to issue a separate notice that proposes rule making, otherwise known as an NPRM under the Part C MOE provision.

We will seek to balance reducing burdens to state with accountability for services and state and local financial contributions under the Part C Non-Supplanting Requirements.

Now, to talk more specifically about the Part C regulations. Please note that it would be impossible to name all the key changes -- just know that it's about 900 pages long -- in this short time that I have with you. So I'm going to focus on four that I want to bring to your attention: use of insurance, confidentiality, timelines, and the term multidisciplinary.

The first key change is use of insurance. As you know, the current regulations do not clarify when or how public benefits or insurance or private insurance may be used. And this is the area in which the Department received by far the most number of comments. Commenters have raised concerns regarding parents' no-cost protection rights and confidentiality.

The White House, the Secretary and I feel strongly that children's and parents' no-cost protection rights and confidentiality provisions are protected. And at the same time that resources are maximized in order to pay for services under

Part C of IDEA. So in response, regarding using public insurance and benefits to pay for Part C services, we have added three new requirements that provide important protection for parents of infants and toddlers with disabilities.

First, a state must obtain a parent's consent prior to requiring a parent to enroll in a public benefit or insurance program and may not require the parent to enroll in such a program in order to receive Part C services.

Second, if the use of public benefits or insurance imposes certain costs on the parent, then parental consent must be obtained for its use.

And third, if the state lead agency or early intervention service or EIS provider or program uses public benefits or insurance to pay for Part C services, the state must provide written notice to parents of the applicable confidentiality and no-cost protection. Generally, parental consent must be obtained prior to accessing a parent's private insurance unless the state has adopted specific statutory no-cost protection.

A second area, the key change we made really regards parents' and children's confidentiality rights. Lead agencies, state educational agencies or SEAs and local educational agencies or LEAs have a clear responsibility to identify children potentially eligible for services under Part B of the Act and to ensure a smooth transition from the state's Part C program to Part B program.

As Andrew Carnegie once said, "Teamwork is the ability to work together toward a common vision. It is the fuel that allows common people to obtain uncommon results." Our common goal and vision are to create the best future possible for our infants and toddlers with disabilities.

The Part B and Family Educational Rights and Privacy Act, also known as FERPA, confidentiality provisions are adopted to apply to Part C with minor adjustments such that participating agencies that provide Part C services have access to Part C records to provide services and must comply with confidentiality protection once a child is referred to Part C.

We have modified some provisions to reflect the urgency of obtaining information quickly given the shorter time period the children spend in the Part C program compared to Part B. Additionally, the lead agency must, without prior parental consent, provide the LEA for Part C toddlers potentially eligible for Part B services the basic child find information that would otherwise be personally identifiable information unless the state has invested to adopt an opt-out policy.

However, some commenters urged the Department to require a lead agency to obtain parental consent prior to disclosing any information to an LEA or SEA as it is personally-identifiable information. Therefore, the state may adopt an opt-out policy that would provide parents an opportunity to object to the disclosure of such information. And, if the parent objects within a specified timeframe, disclosure of the information would be barred.

We made these changes to balance the confidentiality rights of parents against the need for state flexibility and the IDEA mandate to identify all children in need of services at the earliest opportunity.

The third key change includes four major timeline provisions. In each of these timelines, we balance the importance of identifying children as early as possible against the ability of the state to implement what is feasible and reasonable without undue burden.

The referral timeline. Some commenters pointed out that the proposed timeline, "as soon as possible," could potentially introduce long delays into the Part C referral process, and that it may be difficult to enforce. The Department retained the language "as soon as possible" but established a maximum timeline of seven days as a compromise due to suggestions that ranged from three to ten business days.

The 45-day timeline. The Department retained the 45-day timeline from referral, not consent, as what was originally proposed to the initial IFSP, but in order to address the concerns of the commenters, we have included limited exceptions when the 45-day timeline will not apply. This is to help states to continue to ensure timely evaluation in initial IFSP team meetings without unduly burdening Part C programs - also while recognizing that a child's illness or family emergency is outside of the state's control.

Third, the initiation of early intervention services as identified on the IFSP. The IFSP must include the projected dates for the initiation of each early intervention service. Parental consent is required before the provision of early intervention services. Those early intervention services must then be provided as soon as possible after parental consent is obtained.

The language "as soon as possible" recognizes various factors such as the availability of service providers and the needs of the family. Given that the Department did not propose another timeline and did not receive comments regarding a specific timeline, the "as soon as possible" language was retained.

However, data obtained from the State Performance Plan and the Annual Performance Reports show that the vast majority of states have adopted a de facto 30-day timeline for the initiation of services.

Transition timeline. In response to comments from parent groups and LEAs regarding the timeline for transition to Part B services, which does require a referral to Part B which will have to provide parents with Part B procedural safeguards and obtain parental consent for evaluation, the Department decided not to move forward with the proposed nine months. Commenters felt the proposed nine months was far too early for the LEA notification for children potentially eligible for Part B. Rather, 90 days made the most sense as an outside timeline, given the following IDEA Part B timeline.

An individualized education program or IEP must be developed and implemented by age three for a child exiting Part C and eligible to enter Part B. Part B has a 60-day or other state-established timeline to evaluate a child after parental consent is provided. And Part B has a 30-day timeline to implement the IEP.

The LEA notification timeline aligns with the Transition Conference timeline. A transition conference must occur for children exiting Part C and potentially eligible for Part B services not later than at least 90 days, but not more than nine months prior to the toddler's third birthday.

And last but not least, the use of the term “multidisciplinary.” Regarding the proposed definition of multidisciplinary as it relates to the IFSP team we agreed with the commenters' concern that one individual, even if that individual was qualified in more than one discipline or profession, could not serve as the sole member of the IFSP team.

We agreed that this was not best practice and therefore required that the IFSP team be comprised of the parent and two or more individuals from separate disciplines or professions with one of these individuals being the service

coordinator. As some say, "There is no I in team," and to echo Ken Blanchard, "None of us is as smart as all of us."

Regarding the multidisciplinary evaluation, one individual who is qualified in more than one discipline or profession may conduct a multidisciplinary evaluation and assessment. This is a change from current regulations, which require two or more individuals, but this has not changed from what was proposed in the NPRM which was intended to provide states with needed flexibility.

So, let me say that we have made key changes in the early intervention program to improve results for children with disabilities, to reduce burden where possible, and to increase state flexibility in options, all the while ensuring state accountability for child find and provision of early intervention services to infants and toddlers with disabilities and their families.

Let me just end with one final thought. In one of my favorite Family Circus cartoons, as the dad sits reading the newspaper, he says, "Sometimes I worry about the future of this country." And, as the mom gazes out the window at the children playing, reading and drawing, she calmly states, "I don't." Well, to echo that thought, I don't either. Let's just remember that their minds are in our hands.

Finally, a question some of you may have is when did the Part C Final Regulations go into effect? Thirty days from publication in the Federal Register. Please watch the Federal Register Web site for the official publication.

We are planning a multi-faceted rollout in technical assistance strategy to help you effectively implement the new requirements. Over the next several

months we will be doing Webinars, technical assistance documents, and a full-day training. The full-day training will be on November 16, prior to the Division of Early Childhood or DEC conference.

DEC will be held in the D.C. area at the Gaylord Hotel at the National Harbor. Information about registering for the training session will be available on the TADnet website soon. We are also pleased to note that the IDEA.ED.gov Web site Part C section is now live, with a searchable copy of the new regulation.

Thank you for your time and thank you very much for your patience. We look forward to sharing more information on Part C over the next few months.

Ruth Ryder: Thank you, Alexa. I know how pleased you are to be making this announcement.

I have just a few closing comments. Copies of the pre-publication version of the regulation will be available shortly as Alexa said on ED.GOV in the OSERS section under News. So if you go into ED.GOV and find OSERS on the splash page, one the links is News and you can access the pre-publication version of the Regulation at that site. They also will be available on IDEA.ED.gov.

And as Alexa said, the Regulations will be published in the Federal Register within a couple of weeks. The pre-publication version posted on the website is what the Department sent to the Federal Register. And just to reiterate, the effective date of the Regulations will be 30 days from the date of publication in the Federal Register.

Alexa also mentioned the November 16th training session that will be held prior to the DEC conference at National Harbor in Maryland. Registration for that session will be live today on the TADnet site. So if you go into TADnet.org, you will be able to access that registration for that day-long training session.

This will be an interactive session that's primarily for implementers, those who will be implementing the regulations on a day-to-day basis. And this is a pre-session prior to the DEC conference.

We're also planning to do several Webinar-kind of overview training sessions prior to November 16, and those sessions will be on key sections of the final regulations and will be - as soon as Alexa gets back from the Bus Tour, we'll be setting those sessions up.

We are also finalizing non-regulatory guidance that will be available soon.

Finally, there are many in the Department who have worked long and hard on these regulations, but I'd like to recognize a few who worked longer and harder. Mary Louise Dirrigl and Laura Duos from OSERS' Office of Policy and Planning, and Kala Surprenant from the Office of the General Counsel have worked tirelessly for a long time to finalize this regulation package.

I'd also like to thank all of you for your patience and we look forward to working with you as we move forward in our efforts to improve results for infants and toddlers with disabilities and their families.

Thank you.

END